

1 If you don't have any knowledge, that's fine.

2 MR. KNOWLES-KELLETT: I'm objecting because the  
3 witness doesn't understand the question. You have to  
4 clarify it.

5 THE WITNESS: I'm not sure what you mean by that.

6 BY MR. KELLER:

7 Q Are you aware of operations in which a licensee  
8 will link the output from one receiver into the input of  
9 additional repeaters in order to expand coverage of the  
10 overall system?

11 A I believe that sort of operation is permissible.

12 Q Okay, and are you aware that there is off-the-  
13 shelf equipment advertised for doing just that?

14 A I'm not aware of it.

15 Q You have no familiarity with it? Now, Mr. Oei,  
16 please turn to Exhibit 291, WTB Exhibit 291. Now, first of  
17 all, isn't it true that there was a sort of a summary report  
18 that also accompanied this table?

19 A Yes.

20 Q Isn't it true that it's a two-page report dated  
21 July 10, 1997?

22 A I don't know the exact date unless I see it.

23 Q May I show it? I have a full copy. May I show  
24 this to the witness? I'll show the witness, Your Honor.  
25 Mr. Oei, I'd like you to just review this document for a

1 moment and let me know when you've had a chance to peruse  
2 it?

3 (Pause.)

4 A I'm familiar with it.

5 Q Did you prepare this document?

6 A Yes.

7 Q Is it correct that this is intended to be a  
8 summary to accompany this table that is in WTB Exhibit 291?

9 A Yes.

10 Q Mr. Oei, the third full paragraph down, would you  
11 read that into the record, please?

12 A "The inspection did not investigate whether the  
13 stations were placed in operation on time in 90.155 or had  
14 been permanently discontinued during the license period,  
15 90.157. Inspections did not investigate loading  
16 requirements, 90.313 and 90.631 and 90.633 or limitations on  
17 a number of frequency pairs, 90.623 and 90.627. Inspections  
18 confirmed the existence or non-existence as indicated by Kay  
19 of operational transmitters at specific locations.  
20 Inspections confirmed the availability or non-availability  
21 of station records, 90.439, specifically the radio station  
22 license, 90.437 and station maintenance records, 90.443."

23 Q Thank you. Now, I would like you to turn, first  
24 of all, back to Exhibit 291. I believe you were asked about  
25 an entry on page eight. If you'd turn to page eight of WTB

1 291, it was the entry for WIK -- again, my copy plus my eyes  
2 -- is it 896?

3 Were you present at the inspection of that  
4 particular facility?

5 A Yes.

6 Q Isn't it true that Mr. Kay pointed out to you an  
7 entry rack where there were still combiners and other  
8 associated equipment installed and stated that the  
9 transmitter had been removed for maintenance or repair?

10 A I don't recall.

11 Q You don't have any specific recollection? Do you  
12 recall any station that you inspected during this overall  
13 inspection where that scenario occurred?

14 A Yes.

15 Q Do you recall what locations?

16 A No.

17 Q In such locations, in such situations, in a  
18 situation in which you inspected a facility, there was no  
19 transmitter constructed at the authorized location, but Mr.  
20 Kay pointed out an entry slot and combiner of other  
21 equipment was there, but just the transmitter was out, how  
22 would that be listed in this report? Is there a footnote  
23 that describes that?

24 A The footnote here says six, which means that Mr.  
25 Kay informed us that it was not constructed. Number six

1 usually also means that we didn't inspect it.

2 Q Which footnote in here describes the situation in  
3 which Mr. Kay pointed out combiner equipment which stated  
4 that the transmitter was missing from the rack because it  
5 was out for inspection? Which footnote covers that  
6 situation?

7 A Number 13 indicates that it was not constructed  
8 during our first visit, but on a subsequent visit it was.

9 Q Well, Footnote 13, if you would just read the  
10 footnote into the record?

11 A "On first visit to the site, the station was not  
12 constructed. On the second visit, the licensee stated that  
13 the frequency had been programmed into the radio."

14 Q Now, that implies, does it not, that the physical  
15 radio was there, but merely was programmed to include  
16 another frequency, correct?

17 A That's true.

18 Q So, that would not cover a situation where a radio  
19 was physically removed. I'm talking about situations in  
20 which I believe you said you do recall, although you don't  
21 believe it was at Upland, where Mr. Kay did, in fact, point  
22 to an empty spot on the rack and stated that the transmitter  
23 had been removed for maintenance and repair.

24 A Well, let me read on.

25 (Pause.)

1                   THE WITNESS: I don't see any footnotes here that  
2 would indicate that.

3                   BY MR. KELLER:

4           Q     Is it likely that any such situations would have  
5 been included under Footnote 6, then?

6           A     No, Footnote 6 indicates that the station is not  
7 temporarily out of service, but is just not constructed.

8           Q     Well, I guess that's what I'm trying to determine.  
9 IF there's no specific footnote that relates to a station  
10 that's temporarily out of service, then either those  
11 stations are not included in this report at all or they've  
12 been picked up under another footnote. I'm just trying to  
13 determine which footnote they were sort of stuck under, so  
14 we'll know where to look for them.

15          A     I would have to say that as of Footnote 6, that he  
16 had informed us on the first day of inspections that the  
17 station was not constructed.

18          Q     Well, I understand that. But, that's not my  
19 question. My question is, which footnote or what entry  
20 covers the situation in which he informed you that the  
21 station was temporarily out of service and showed you the  
22 empty space and associated equipment at the mountain top?  
23 Which footnote entry would those be reflected under?

24          A     I don't see it here.

25          Q     Now, Mr. Oei, looking at WTB 291 overall, were you

1 personally involved in the inspection of all of these  
2 facilities?

3 A Yes.

4 Q So, every one of the stations, how long did that  
5 take?

6 A Approximately 20 days.

7 Q Who else was present with you on those  
8 inspections?

9 A In addition to Mr. Kay?

10 Q Well, other FCC personnel?

11 A Usually Ben Nakamiyo and/or Glen Phillips and, I  
12 believe, Jim Zoulek was present during the inspections at  
13 Mr. Kay's office.

14 Q Just to be clear, you were present at all of  
15 these?

16 A Yes.

17 MR. KELLER: We have no further questions, Your  
18 Honor.

19 CHIEF JUDGE CHACHKIN: Any redirect?

20 MR. KNOWLES-KELLETT: Yes, Your Honor, just a  
21 couple of questions.

22 REDIRECT EXAMINATION

23 BY MR. KNOWLES-KELLETT:

24 Q With respect to Mr. Keller's questions regarding  
25 being shown an empty space with combiners, do you recall

1       that, in fact, happening?

2           A       It's possible. I don't recall the specifics.

3           Q       Okay. Can you describe the distance from Santiago  
4       -- looking at your notes, the distance from Santiago Peak to  
5       Van Nuys? I think if you look at the page marked --

6           A       Right, 103.28 kilometers.

7           Q       And, in light of his questions, can you describe  
8       again what, specifically what the problem with the equipment  
9       you found when you went on the inspection with Ben Nakamiyo?

10          A       It was unusual, because typically, a repeater  
11       listens in on a mobile frequency and transmits on a base  
12       station frequency. In this particular case, it was  
13       reversed. It seemed like he was receiving on a base station  
14       frequency and retransmitted on a mobile station frequency.

15          Q       From the Van Nuys office?

16          A       Right.

17          Q       Can you explain how you determined that that was  
18       occurring?

19          A       We used two receivers, one to measure or observe,  
20       one frequency and the other to observe the other  
21       frequencies.

22          Q       Then, how did you determine which was coming out  
23       of Mr. Kay's office?

24          A       Direction finding. Confirm that the one on 809  
25       was originating from Mr. Kay's office.

1           Q     And, normally, it would be on a repeater, the 854  
2     coming out, if it were authorized as a repeater?

3           MR. SHAINIS:  Objection, leading the witness.

4           CHIEF JUDGE CHACHKIN:  Sustained.

5           BY MR. KNOWLES-KELLETT:

6           Q     Okay, can you describe what would normally occur  
7     if it was in accordance with --

8           A     If Mr. Kay had authorization to have a fixed relay  
9     station, that would be permissible, what he was doing.  But,  
10    his license only states he's authorized to have a control  
11    station which does not allow you to operate that station as  
12    a repeater, which his station was.

13          Q     Okay, and what is the problem with doing it the  
14    way he was doing it?

15          A     Well, if he was not monitoring, he could cause  
16    interference to other co-channel licensees.

17          Q     Okay.

18          A     And, again, that's just a violation of the rules,  
19    operating a station in a method not permissible.

20          MR. KNOWLES-KELLETT:  No further questions.

21          MR. KELLER:  Your Honor, I do have a couple of  
22    follow ups.

23          CHIEF JUDGE CHACHKIN:  Go ahead.

24                         RE-CROSS-EXAMINATION

25          BY MR. KELLER:



1           Q     Mr. Nakamiyo -- I'm sorry. I apologize. Mr. Oei,  
2     you stated that normally a repeater will monitor on 809 and  
3     retransmit on 854, in this particular contact. But, the  
4     station at Van Nuys was not a repeater, is that correct?  
5     Isn't it correct it was a control station and not a  
6     repeater, correct?

7           A     Correct.

8           Q     But, it is normal for a control station in this  
9     frequency range to transmit on 809, correct?

10          A     Correct.

11          Q     You also testified that the problem with the  
12     particular operation that was described here was that it  
13     doesn't monitor, it can't monitor. Isn't it true that under  
14     the rules, there are no monitoring requirements attached to  
15     trunk stations that are licensed as YX?

16          A     I believe so, if you have exclusive use.

17          Q     That's correct. Now, to go back to something you  
18     testified to, I want to make sure the record is clear, you  
19     stated that no effort was made to determine the source of  
20     the 854 signal that you were hearing, is that correct?

21          A     I don't recall that being done.

22          Q     You don't recall that you did, or you don't recall  
23     that was your testimony?

24          A     I don't recall that we made an effort to determine  
25     where that was coming from, the 854.

1           Q     You heard the stipulations on the record, that Mr.  
2     Kay was authorized for a YX station, an 854.4875 MHz at Oat  
3     Mountain, correct?

4           A     Yes.

5           Q     Now, if he was authorized for an 854.4875 MHz at  
6     Oat Mountain on a YX authorization, that authorization would  
7     not have required monitoring, would it?

8           A     It would have required monitoring.

9           Q     Well, why, if it was a YX authorization for which  
10    he had exclusive use?

11          A     That base station over towards Lukens was not  
12    required to do the monitoring, but the station at his office  
13    was not authorized to be a repeater.

14          Q     Well, let's set that question aside for a moment.  
15    He was authorized as a control station, correct?

16          A     Right.

17          Q     And, he was located within 20 miles of Oat  
18    Mountain, correct?

19          A     I believe so.

20          Q     And, he was transmitting on an authorized FX  
21    control station frequency for purposes of controlling WNJN  
22    910, correct?

23          A     Yes.

24          Q     Now, for purposes for operating as a control  
25    station, transmitting on 809, it would not have required

1 monitoring for purposes of controlling a YX station within a  
2 20-mile radius, correct?

3 A If used in that manner --

4 Q My question was, setting aside the repeater issue  
5 for the moment, if it were used as a control station,  
6 correct?

7 A Right, it was part of that trunk system.

8 Q Now, you also testified earlier that you do  
9 believe it is permissible under the rules to link different  
10 repeaters?

11 A I don't believe so.

12 MR. KNOWLES-KELLETT: I objection.

13 CHIEF JUDGE CHACHKIN: Overruled.

14 BY MR. KELLER:

15 Q Was it not your testimony when I described to you  
16 the situation where an operator would link the output of one  
17 repeater into the input of another for purposes of expanded  
18 coverage? I believe your testimony was, you believe such  
19 operation is permissible?

20 A I believe it's permissible to link, but there are  
21 restrictions on how you do it.

22 Q What do you understand those restrictions to be?

23 A Well, you have to have it designated on your  
24 station license. For example, FX 1 means you have a control  
25 point. You can't use that to operate a repeater. There has

1 to be a different designation.

2 Q Is there a specific rule that you have in mind  
3 that prohibits this type of linking?

4 A I think there's a general rule that stations must  
5 operate under station authorization.

6 Q Are you aware of any specific rule? I mean,  
7 certainly, I could walk up to a control station and feed a  
8 microphone and communicate through the repeater in that  
9 fashion, correct?

10 A Yes.

11 Q What you're telling me is, it's your understanding  
12 that I'm not allowed to have the output of the repeaters do  
13 that for me, correct?

14 A Yes.

15 Q But, just as a general rule, or do you know a  
16 specific rule that precludes that?

17 A I don't know a specific rule.

18 Q Setting aside all of that, the distance between  
19 Oat Mountain and Santiago Mountain is more than 70 miles,  
20 correct?

21 A Santiago? I think so.

22 Q So, if a licensee, a co-channel licensee at  
23 Santiago were hearing transmissions from Oat Mountain that  
24 we're assuming for the sake of argument to be transmissions  
25 that Oat Mountain were lawfully authorized, that would not

1 be considered improper interference, correct?

2 A I don't know.

3 MR. KELLER: No further questions, Your Honor.

4 CHIEF JUDGE CHACHKIN: Anything further?

5 MR. KNOWLES-KELLETT: No further questions, Your  
6 Honor.

7 CHIEF JUDGE CHACHKIN: You're excused. Thank you  
8 very much.

9 MR. KNOWLES-KELLETT: Can we take a five minute  
10 break before starting Mr. Sobel?

11 CHIEF JUDGE CHACHKIN: All right, let's take a  
12 five minute break.

13 (Whereupon, a short recess was taken.)

14 CHIEF JUDGE CHACHKIN: Back on the record. Raise  
15 your right hand.

16 Whereupon,

17 GRAIG SOBEL

18 having been first duly sworn, was called as a witness  
19 herein, and was examined and testified as follows:

20 CHIEF JUDGE CHACHKIN: Please be seated.

21 MR. KELLER: Your Honor, may I raise a matter  
22 before we begin with this witness?

23 CHIEF JUDGE CHACHKIN: Yes.

24 MR. KELLER: I would like to make a motion to  
25 strike all the testimony of Mr. Oei relating to, I suppose

1 relating to alleged interference, but mainly the matter  
2 regarding the link transmitter and the inspection that was  
3 conducted in May of 1992.

4 My reason for this is my understanding of the  
5 presentation of the Bureau's case is that this is being  
6 offered as evidence under the issue of whether or not Mr.  
7 Kay engaged in willful and malicious interference. I would  
8 note, Your Honor, that, and I waited to make this motion  
9 until we heard the exact testimony of the witness, but the  
10 witness corroborates my understanding that this is the  
11 inspection based on the complaint. The inspection occurred  
12 in May of 1992. They inspected this exact station we've  
13 been hearing about in some detail.

14 As a result of that inspection, a notice of  
15 apparent liability was written. A legal challenge was filed  
16 with respect to that. Following that, a notice of  
17 forfeiture was entered and the petition for reconsideration  
18 of the notice of forfeiture was filed. Again, back in  
19 December 30, 1992. The matter is pending.

20 In neither the notice of apparent liability nor  
21 the notice of forfeiture was Mr. Kay charged with malicious  
22 or willful interference. He was charged in those notices,  
23 among other things, with a violation of the rule. The  
24 Bureau's position is that the technical way in which this  
25 control station was being used wasn't proper, that it should

1 have been done through a different type of license or  
2 through a control action. It seems to me, Your Honor, that  
3 that's a matter that is still pending and there's a petition  
4 for reconsideration that's been pending since December 30,  
5 1992, that issue shouldn't be relitigated here.

6 If this was fodder for a charge of malicious  
7 interference, it should have been raised at that time. I  
8 don't see that this testimony is relevant to the issue of  
9 malicious interference and I don't think we should be  
10 relitigating the technical issue of whether this  
11 configuration is proper, since that's pending in another  
12 proceeding.

13 On that basis, I would move to strike all the  
14 testimony regarding the link transmitter and the May, 1992  
15 inspection.

16 MR. KNOWLES-KELLETT: Your Honor, in conjunction,  
17 we think it very much goes to the interference issue and we  
18 think that it does have to be bolstered by the testimony of  
19 other witnesses and we think it's premature to make such a  
20 motion. The NAL issue, the reason it's been pending, is  
21 because Mr. Kay's matters with respect to interference were  
22 designated for hearing and we told CIB that we'd be stepping  
23 into the purview of this proceeding to be resolving anything  
24 in that matter.

25 CHIEF JUDGE CHACHKIN: All right, the motion to

1 strike will be denied. Counsel indicates he has other  
2 witnesses in connection with this matter, and let me point  
3 out, they have the burden of proof. If they don't establish  
4 malicious, willful interference, then they will fail in  
5 their burden.

6 MR. KELLER: Very well, Your Honor.

7 CHIEF JUDGE CHACHKIN: All right, Mr. Sobel is  
8 here.

9 DIRECT EXAMINATION

10 BY MR. SCHAUBLE:

11 Q Good morning, sir.

12 A Good morning.

13 Q Please state your name and address for the record?

14 A My name is Graig Sobel. I reside at 16459  
15 Callahan Street, North Hills, California 91343.

16 Q Okay. Mr. Sobel, please make sure you understand  
17 the question I'm asking. If I ask a question and you don't  
18 understand it, please inform me so I can rephrase my  
19 question.

20 Mr. Sobel, have you had any discussions with  
21 anyone concerning testimony James Kay provided in this  
22 proceeding last week?

23 A No, I have not.

24 Q Have you had any discussions with anyone  
25 concerning the testimony Paul Oei provided this morning?



1           A     No, I have not.

2           Q     Mr. Sobel, I note that the Judge had issued what's  
3     called a sequestration order in this proceeding, which  
4     provides that you may not discuss your testimony with  
5     witnesses who have not yet testified in this proceeding  
6     until they've testified and the individuals we know of are  
7     Roy Jensen, Carla Pfeifer, Marc Sobel, Barbara Ashauer and  
8     Kevin Hessman and Thomas Gerrard and Vincent Cordaro. Do  
9     you understand that?

10          A     Yes, I do.

11          Q     Now, Mr. Sobel, were you subpoenaed to appear and  
12     testify in this proceeding?

13          A     Yes, I was.

14          Q     The request in the subpoena directed you to  
15     produce certain documents?

16          A     Yes, it did.

17          Q     Do you have documents in response to that  
18     subpoena?

19          A     Yes, I do. I have my billing records.

20                MR. SCHAUBLE: Your Honor, may I approach the  
21     witness?

22                CHIEF JUDGE CHACKIN: Yes, sir.

23                (Pause.)

24                MR. KELLER: Your Honor, I'd --

25                MR. SCHAUBLE: Your Honor, may I go off the record

1 for a few minutes to review these documents?

2 CHIEF JUDGE CHACHKIN: Why don't we do that?

3 (Whereupon, a short recess was taken.)

4 CHIEF JUDGE CHACHKIN: Back on the record. Please  
5 be seated. Are we ready?

6 MR. SCHAUBLE: I am, Your Honor.

7 CHIEF JUDGE CHACHKIN: Do you want to see the  
8 material before we begin, or do you want to wait?

9 MR. KELLER: I wanted -- are we planning to  
10 introduce this material?

11 MR. SCHAUBLE: Probably not, Your Honor. I may  
12 have one or two questions for the witness based on this, but  
13 based upon my review, I believe at this point, I don't see a  
14 need to enter the document into evidence.

15 MR. KELLER: Well, I guess I still have kind of an  
16 objection in the sense, Your Honor, that the witness was  
17 given a subpoena to appear in this hearing and was asked to  
18 bring documents which, it seems to me, are documents that  
19 could have been requested of him at the time he was deposed  
20 or could have been requested much earlier in this  
21 proceeding.

22 You know, on the day the witness is appearing, the  
23 documents are being produced. I just don't think it's  
24 appropriate to use the hearing process itself to conduct  
25 discovery that could have been had years ago.

1           MR. SCHAUBLE: Your Honor, there was a request for  
2 documents at the time of Mr. Sobel's deposition subpoena and  
3 we thought at least, arguably, these records would have come  
4 within the focus of the deposition subpoena. But, Mr. Sobel  
5 read it differently, so we thought the appropriate recourse  
6 was to ask for these documents more specifically in  
7 connection with the hearing subpoena.

8           CHIEF JUDGE CHACHKIN: All right, you ask your  
9 questions. We'll see where we go from this. If it's only  
10 one or two questions, it's not a big problem. We'll see  
11 where we go.

12           MR. SCHAUBLE: Okay.

13           BY MR. SCHAUBLE:

14           Q     Mr. Sobel, could you please describe your  
15 educational background?

16           A     I've a Bachelor of Science degree in Accounting at  
17 California State University, Northridge. I have been a CPA  
18 for a number of years, although I'm not currently a CPA.

19           Q     Okay, have you had any formal classroom training  
20 in computers?

21           A     Yes, I have.

22           Q     Could you please describe that training?

23           A     I took a class on Fox Pro programming from a noted  
24 lecturer on the subject for about a week.

25           Q     When did you undertake that training?

1           A     I believe it was 1992.

2           Q     Do you have any other formal classroom training in  
3 computers?

4           A     Only those related to the accounting degree that I  
5 got at the university.

6           Q     Okay. Mr. Sobel, what is your current employment?

7           A     I work as a computer consultant and I teach people  
8 how to do bookkeeping on computer systems.

9           Q     And, what is the name of your employer?

10          A     M Management Systems, Inc.

11          Q     Where is M Management Systems, Inc. located?

12          A     They're in Van Nuys, California.

13          Q     How long have you been employed at M Management  
14 Systems, Inc.?

15          A     Two and a half years.

16          Q     Before you worked at M Management Systems, Inc.,  
17 where did you work?

18          A     I worked for a company called CSH Solutions, which  
19 was --

20          Q     And, during what time period did you work at CSH  
21 Solutions?

22          A     For the prior three years, three and a half years.

23          Q     What was the business of CSH Solutions?

24          A     Essentially the same business.

25          Q     What was your position at CSH Solutions?

1           A     I was the sole proprietor. I ran the business.

2           Q     Were you an owner of the business?

3           A     Yes, I owned 50 percent of the business.

4           Q     Now, before CSH Solutions, where did you work?

5           A     I worked for a CPA firm called Cohn Handler &  
6     Company.

7           Q     During what time period did you work at Cohn  
8     Handler?

9           A     1983 till the time I started that business. About  
10    ten years.

11          Q     What type of work did you perform at Cohn Handler?

12          A     Mostly public accounting functions. In the last  
13    few years, I did computer consulting, mostly.

14          Q     Okay, what type of computer consulting work did  
15    you perform?

16          A     Basically the same kind. Hardware and software  
17    related to accounting.

18          Q     Okay. Now, is it correct that Marc Sobel is your  
19    brother?

20          A     That is correct.

21          Q     Approximately how many clients currently do you  
22    service at M Management Systems?

23                MR. SHAINIS: Objection as to relevancy. I don't  
24    see how it's relevant as to how many clients he has to any  
25    of the issues in this case?

1 MR. SCHAUBLE: Your Honor, just in terms of  
2 background.

3 MR. SHAINIS: Well, relevancy --

4 CHIEF JUDGE CHACHKIN: The question is not what he  
5 does now, the question is when did he do this consulting?  
6 It doesn't have to do with what he's done subsequent.

7 MR. SCHAUBLE: Your Honor, I'll move on.

8 CHIEF JUDGE CHACHKIN: All right.

9 BY MR. SCHAUBLE:

10 Q Mr. Sobel, are you familiar with an individual  
11 named James Kay?

12 A Yes, I am.

13 Q In what capacity are you familiar with Mr. Kay?

14 A Mr. Kay is one of my clients.

15 Q And, for what time period has Mr. Kay been a  
16 client of yours?

17 A For approximately the last ten years.

18 Q What sort of services have you provided to Mr.  
19 Kay?

20 A I've written a custom billing program for him to  
21 use in his business, as well as installing accounting  
22 software for his other businesses. I've also worked with  
23 him from an accounting standpoint to produce some financial  
24 information and tax returns.

25 Q With respect to the custom billing program that

Heritage Reporting Corporation  
(202) 628-4888

1     you mentioned, do you recall when you first wrote that  
2     custom billing program?

3             A     Approximately ten years ago.

4             Q     And, are you familiar with the name Lucky's Two-  
5     Way Radio?

6             A     Yes, I am.

7             Q     What is your understanding of what Lucky's Two-Way  
8     Radio is?

9             A     Lucky's Two-Way Radio is a proprietorship owned by  
10    Mr. Kay.

11            Q     Do you have an understanding as to what the  
12    business of Lucky's Two-Way Radio is?

13            A     Yes, I do.

14            Q     What's that understanding?

15            A     My understanding is that Lucky's rents air time  
16    and provides a mobile communication system for its clients.

17            Q     Now, are you also familiar with the name Southland  
18    Communications?

19            A     Yes, I am.

20            Q     And, what is your understanding of what Southland  
21    Communications is?

22            A     Southland sells radio systems to businesses in the  
23    area, as well as servicing or repairing those radios and  
24    other radio citizen band type operations.

25            Q     Now, when you first wrote this custom billing

1 program, did the custom billing program cover both Lucky's  
2 and Southland or did it just cover one of the businesses?

3 A It only covered Lucky's.

4 Q Now, is it correct that from time to time, this  
5 billing program has been modified?

6 A That's correct.

7 Q And, who would perform those modifications to the  
8 billing program?

9 A I would.

10 Q Is this billing program in use to this day?

11 A Yes, it is.

12 Q Now, do you recall approximately how many times  
13 you've modified this billing program over the years?

14 A We've added features from time to time over the  
15 years. I couldn't tell you how many times.

16 Q Was there a time when you modified the billing  
17 programs to add the capability to show the number of mobiles  
18 a customer might have at a given site?

19 A Yes, there was.

20 Q Do you recall when you performed that  
21 modification?

22 A Approximately 1992.

23 Q Now, are you familiar with the term trunking  
24 database?

25 A Yes.



1           Q     For the record, could you please state what your  
2 understanding of a trunking database is?

3           A     My understanding is that each trunk radio system  
4 can be as many as 20 different repeaters, each with its own  
5 frequency. And, a radio system can be set up to use those  
6 20 radios.

7                     We were able to download the information from  
8 those radios to determine how much time each user had spent  
9 on their, on using the radio. Based on the information we  
10 got, we could determine which clients it was and we needed a  
11 datafile, a database, to accomplish that.

12          Q     So, was there a time when you modified the billing  
13 program to include a trunking database?

14          A     Yes, there was.

15          Q     Okay, and do you recall when that function was  
16 added?

17          A     I don't recall specifically.

18          Q     Can you provide me with an estimate as to when you  
19 provided that capability?

20          A     It would be four, five years ago.

21          Q     Now, for the record, is it correct that you're  
22 familiar with the term operating system?

23          A     In relation to computer systems?

24          Q     Yes.

25          A     Yes.

1           Q     For the record, could you please explain what an  
2     operating system is?

3           A     An operating system is the basic function of a  
4     computer. It controls the way the computer talks to  
5     different components of hardware, the video screen, the  
6     keyboard, the hard disk, the modem and those kinds of  
7     functions of the components of a computer system.

8           Q     Now, what operating system does Mr. Kay's computer  
9     system currently use?

10          A     Mr. Kay's system uses a DOS operating system.

11          Q     Now, was there a time when Mr. Kay had a computer  
12     system that used a different operating system?

13          A     Yes, it did.

14          Q     And, what operating system was that?

15          A     That operating system was SCO Xenix.

16          Q     During what time period did Mr. Kay operate a  
17     system that used Xenix operating system?

18          A     From the time I began working with them until  
19     approximately May or thereabouts of 1994.

20          Q     Now, what role, if any, did you have in  
21     maintaining the Xenix operating system?

22          A     I didn't maintain the Xenix operating system. I  
23     was limited to the programs I wrote on the operating system,  
24     but I did not maintain the operating system.

25          Q     Okay. What role, if any, have you had in

1 maintaining the DOS system?

2 A The DOS system, I do maintain. I maintain the  
3 network operating system.

4 Q Is it correct that you've maintained that  
5 operating system since it was originally installed on Mr.  
6 Kay's system?

7 A Yes.

8 Q Now, was there a time period during which Mr. Kay  
9 had both the system operating on DOS and a system operating  
10 on Xenix?

11 A Yes, there was.

12 Q Okay. Do you recall what that time period was?

13 A Mr. Kay had some DOS computers for a couple of  
14 years before the end of the Xenix operating system.

15 Q Do you recall when the last time Mr. Kay operated  
16 a computer using the Xenix system?

17 A Yes, I do.

18 Q And, when was that?

19 A Approximately May of 1994.

20 Q Now, it's correct that the billing program you  
21 wrote for Mr. Kay originally operated on the Xenix system,  
22 correct?

23 A Yes.

24 MR. SHAINIS: Objection, form of the question.

25 CHIEF JUDGE CHACHKIN: Overruled. The witness has

1 answered.

2 MR. SHAINIS: Okay.

3 BY MR. SCHAUBLE:

4 Q Do you recall when the billing program was  
5 transferred from the Xenix system to the DOS system?

6 A Yes, that was May, 1994.

7 Q Mr. Sobel, I'd like to direct your attention to --  
8 under that notebook, there are two accordion files. If  
9 you'd take those papers out of that file. This is part of  
10 WTB Exhibit 347. Do you have the document before you, Mr.  
11 Sobel?

12 A Yes, I do.

13 Q Have you seen these documents before?

14 A Yes, I have.

15 Q What is your understanding of what these documents  
16 are?

17 A This is a printout of the customer maintenance  
18 screen, where the basic information about one of his clients  
19 would be stored.

20 Q Now, did you have any role in assisting Mr. Kay or  
21 his staff in preparing this report?

22 A Yes, I did.

23 Q What was that role?

24 A We had to write a program to be able to print  
25 these to the printer in this format.

1           Q     Do you recall approximately when you wrote that  
2     program?

3           A     I would assume it's the March 19, 1995 date that  
4     you see in the upper left hand corner of all these pages.

5           Q     Prior to writing that program on Mr. Kay's system,  
6     could Mr. Kay or one of his employees view this customer  
7     maintenance screen on a computer screen?

8           A     Yes, they could.

9           Q     Prior to your writing the program, did they have  
10    the capability to print the customer name on the screen?

11          A     Yes, they could have.

12          Q     Prior to your writing the program, what would have  
13    been the process involved in printing this information?

14          A     They would have had to hit the print screen button  
15    on the keyboard and then gone over to the printer and hit  
16    the form feed button 800 times.

17          Q     Now, did the program you wrote in March, 1995, in  
18    some way enhance or simplify the process involved in  
19    printing these reports?

20          A     Yes.

21          Q     Please describe how the program enhanced or  
22    simplified that process?

23          A     Once the program was written, it was simply to  
24    execute the program, and it would do the print and the form  
25    feed for us automatically.

1           Q     Do you recall approximately how long it took you  
2     to write this program?

3           A     No, I don't recall.

4           MR. KELLER: I didn't hear the witness' answer?

5           THE WITNESS: I don't recall.

6           BY MR. SCHAUBLE:

7           Q     Would it have taken more or less than one day to  
8     write this program?

9           A     Probably less.

10          Q     And, Mr. Sobel, turning your attention back to the  
11     records themselves, do you see under Site, there's a listing  
12     of sites MNTH bill, MOB and Frequency, do you see that?

13          A     Yes.

14          Q     Under Site, you see number one, number two, number  
15     three, do you see that, sir?

16          A     Yes.

17          Q     Okay. What was your understanding of the meaning  
18     of the information that's entered under these records?

19          A     This customer could use any one of a number of  
20     different sites for his purposes. At this point in the  
21     program's evolution, it was capable of tracking as many as  
22     ten different sites per customer, number one through number  
23     ten.

24                 The site code, 11, 12, 19, for instance, on my  
25     page, referred to which mountain top repeater system he was

1     able to use, this client was able to use. Example, 11 is  
2     Oat Mountain. The -80, for instance, would be the --  
3     basically, the repeater number on the mountain top. For  
4     trunking, there were always 80, because they could use any  
5     one of 20 different radios. They wouldn't even know which  
6     one they were using.

7             For conventional not trunking, you would have  
8     actually a repeater number.

9             The monthly bill amount was an allocation of the  
10    total monthly bills read across as many mountain tops as  
11    they were using. And, the frequency was the basic frequency  
12    that that radio was supposed to use. For 800, there were  
13    always 800 MHz.

14            Q     Now, turning toward the bottom of the page, Mr.  
15    Sobel, do you see there is a record there with the start  
16    date?

17            A     Yes.

18            Q     What is your understanding of the information  
19    that's contained in the start date fields?

20            A     The start date was usually entered when a new  
21    client was entered onto the system.

22            Q     Okay. And, what is your understanding of the  
23    information that would be contained in the end date fields?

24            A     It's customarily if a client became not a client  
25    anymore, an end date was entered. But, it was not a

1 requirement of the system that somebody enter either of  
2 those two dates.

3 Q Now, just to clarify, Mr. Sobel, would it be  
4 possible, under the old Xenix operating system, would it  
5 have been possible for Mr. Kay or his employees to print  
6 these type of reports one at a time?

7 A No. In the Xenix operating system, there is no  
8 print screen button, and without writing a special program  
9 to do this, they could not have printed this screen out.

10 Q Under the Xenix system, would it have been  
11 possible for Mr. Kay or his employees to view this  
12 information?

13 A Yes.

14 Q Under the Xenix operating system, would it have  
15 been possible to write a program that would have allowed  
16 printing of this?

17 A It would have been possible.

18 Q Could you estimate approximately how long it would  
19 take to write such a program?

20 MR. SHAINIS: Objection to relevancy.

21 CHIEF JUDGE CHACHKIN: What's the relevance?

22 MR. SCHAUBLE: Your Honor, without characterizing,  
23 we've had considerable testimony in the record here  
24 concerning the burden that would be involved in providing  
25 information to Mr. Kay and providing information in 1994.



1 The witness has testified that under Mr. Kay's old operating  
2 system, as configured, it was almost impossible to print out  
3 such reports, but that it was impossible to write such a  
4 program.

5 I'm asking him, in essence, how much time that  
6 would have taken, you know, how much of a burden it would  
7 have been to write such a program.

8 CHIEF JUDGE CHACHKIN: Well, is it the licensee's  
9 obligation to write a program in order to prepare documents  
10 for the Commission? I thought the licensee's obligation was  
11 to provide you whatever documents existed. Is there any  
12 obligation of a licensee to write a program so that he can  
13 obtain documents?

14 MR. SCHAUBLE: Your Honor, the licensee's  
15 obligation is to provide information.

16 CHIEF JUDGE CHACHKIN: Which he has in his  
17 possession, isn't that correct?

18 MR. KNOWLES-KELLETT: 308(b) isn't limited, Your  
19 Honor, to information in his possession.

20 CHIEF JUDGE CHACHKIN: Pardon me?

21 MR. KNOWLES-KELLETT: 308(b) --

22 CHIEF JUDGE CHACHKIN: What do you mean it's not  
23 limited?

24 MR. KNOWLES-KELLETT: We can require him to do any  
25 statements regarding character of any of his operations. If

1 he doesn't keep a particular record, we can require him to  
2 tell us what frequency -- just because he doesn't write down  
3 what frequency his transmitter is on doesn't mean that we  
4 can't ask him which frequency his transmitter is on.

5 CHIEF JUDGE CHACHKIN: If he has that information  
6 in his possession.

7 MR. KNOWLES-KELLETT: If he has that information.

8 CHIEF JUDGE CHACHKIN: Can you require him to  
9 write a program so that that will facilitate the providing  
10 of information?

11 MR. KNOWLES-KELLETT: I believe Your Honor --

12 CHIEF JUDGE CHACHKIN: And then charge him with  
13 308 violation if he doesn't write such a program?

14 MR. KNOWLES-KELLETT: I believe, Your Honor, yes.

15 CHIEF JUDGE CHACHKIN: On what basis?

16 MR. KNOWLES-KELLETT: Basically, we're going to be  
17 citing precedent for 308(b) where we can ask just about  
18 anything relative to his operations and he's supposed to  
19 provide us the information.

20 CHIEF JUDGE CHACHKIN: If he has it in his  
21 possession?

22 MR. KNOWLES-KELLETT: I don't believe -- I've  
23 never seen that limitation anywhere.

24 CHIEF JUDGE CHACHKIN: Well, have you ever seen  
25 any indication where the Commission has ever cited one for

1 308 because they haven't written a program?

2 MR. SHAINIS: I don't think there's ever been a  
3 308 the issue before.

4 MR. KNOWLES-KELLETT: That is not true. Your  
5 Honor, first of all, in other cases -- there have been a  
6 couple that went up to the Court of Appeals.

7 CHIEF JUDGE CHACHKIN: For what?

8 MR. KNOWLES-KELLETT: For 308(b) violations.

9 CHIEF JUDGE CHACHKIN: Did they involve situations  
10 where the applicant or the licensee refused to provide  
11 information which he had in his possession?

12 MR. KNOWLES-KELLETT: I don't think the dispute  
13 here, Your Honor, is whether he had it in his possession.  
14 Mr. Sobel has provided it in the computer. The question is,  
15 did he have to crypt it or copy it down? And, I don't think  
16 that they've ever said that the only intent of the document  
17 you have -- the way the case law works, Your Honor, is that  
18 basically you can -- it's a privilege to hold a radio  
19 license. And, we have to regulate millions of licensees.  
20 And, if you don't answer it, you just forfeit your right to  
21 have a license.

22 I think it never addressed the issue about whether  
23 -- as long as it's a reasonable request to the licensee,  
24 we're allowed to require any written response we want. And,  
25 there's no limitation that we could say, for example, Your

1 Honor, please tell us the circumstances under which you had  
2 a felony conviction? And, just because he doesn't have a  
3 document describing the felony conviction, he would have to  
4 write a document saying the circumstances of his felony  
5 conviction.

6 CHIEF JUDGE CHACHKIN: What does that have to do  
7 with this? You're saying he had to write a program in order  
8 to provide this information. You're telling me he's  
9 required to provide a program, to write a program.

10 MR. KNOWLES-KELLETT: Your Honor --

11 CHIEF JUDGE CHACHKIN: Do you have any precedent  
12 for that, where the Commission is --

13 MR. SCHAUBLE: Your Honor, what we're saying is  
14 that he's required to provide the information.

15 CHIEF JUDGE CHACHKIN: That's right, if he has it  
16 in his possession.

17 MR. KNOWLES-KELLETT: Well, he had the information  
18 in his possession, Your Honor. We're not arguing that.  
19 We're arguing about what format he should be required to  
20 provide it in.

21 MR. SCHAUBLE: Specifically, Your Honor, what this  
22 comes down to is the relative ease or difficulty of  
23 providing this information in this particular format at the  
24 time of the 308(b) inquiry.

25 CHIEF JUDGE CHACHKIN: Is there an objection?

1 MR. SHAINIS: Your Honor, yes, there is an  
2 objection.

3 CHIEF JUDGE CHACHKIN: What's the basis for the  
4 objection?

5 MR. SHAINIS: Your Honor, the question assumes  
6 that -- well, the objection was relevancy. It's irrelevant.  
7 And, I believe the question was -- well, why doesn't the  
8 reporter read back the question, so we can have it exactly?

9 MR. SCHAUBLE: Your Honor --

10 MR. SHAINIS: Or even repeat the question, if you  
11 remember it?

12 MR. SCHAUBLE: -- the question was, can you  
13 estimate approximately how long it would have taken to write  
14 a program, this program --

15 MR. SHAINIS: That's my recollection.

16 CHIEF JUDGE CHACHKIN: -- that would have allowed  
17 printing of these reports from the Xenix system.

18 MR. SHAINIS: The length of time it would have  
19 taken Mr. Sobel to do it is irrelevant to the issue.  
20 Whether -- then, Your Honor, you chimed in, and I think  
21 you're absolutely correct -- the licensee is not required to  
22 create documents in response. And, the Bureau's whole case,  
23 the supposition on the 308(b) is that he has to go through  
24 some Herculean efforts to get the information. And, if the  
25 information is not available and you have to go to the next